

SLD #: 256**From: 1972-04-14 To: 0000-00-00****Law Reforms Ordinance, 1972**

THE LAW REFORMS ORDINANCE, 1972

ORDINANCE NO. XII OF 1972

April 14 1972

WHEREAS it is expedient, for the purpose of giving effect to certain recommendations of the Law Reforms Commission, 1967—70, to amend certain laws;

AND WHEREAS the national interest of Pakistan in relation to the achievement of uniformity requires Central legislation in the matter;

NOW, THEREFORE, in pursuance of the Proclamation of the 25th day of March, 1969, read with the proclamation of the 20th day of December, 1971 and the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :—

1. Short title and commencement. —(1) This Ordinance may be called the Law Reforms Ordinance, 1972.

(2) It shall come into force at once, except the provisions of the Schedule relating to amendments in the Code of Criminal Procedure, 1898 (Act V of 1898.), which shall come into force in any Province with effect from such date 1* * * as the Provincial Government thereof may, by 2Notification in the official Gazette, specify in this behalf 3[and different dates may be so specified 4[for different provisions and] for different areas in a Province so that the amendments in the Code are brought in force throughout the Province progressively.]

2. Amendment of certain laws. —(1) The Acts and Ordinances specified in the Schedule are hereby amended to the extent and in the manner specified in the fourth column thereof.

(2) Where this Ordinance requires that in any specified law, or in any section of other portion thereof, certain words shall be substituted for certain other words, or that certain words shall be omitted, the substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that law, or as the case may be, in that section or portion.

1 The words "not later than the first day of January, 1973" omitted by the Law Reforms (Amdt.) Act, 1973 (19 of 1973), s. 2.

2 For Notification enforcing certain provisions of the Ordinance in N.W.F.P., see Government of N.W.F.P., Home and Tribal Affairs Department Notification No. S.Q. Judl. Misc. (HD)/75, dated the 26th December, 1975, N.W.F.P., Gazette, Ext., dated the 30th December, 1975, page 484a;

For Notification enforcing certain provisions of the Ordinance, in Punjab, see the Home Department Government of Punjab, Notification No. Judl/I-3 (2)/75, dated the 26th December, 1975, Gazette of Punjab, Ext., dated the 26th December, 1975, page 1419;

For Notification enforcing certain provisions of the Ordinance, in Sind, see the Law Department Government of Sind, Notification No. S. Legis-4(8)/75, dated the 23rd December, 1975, Gazette of Sind, Ext., dated the 23rd December, 1975, Part I, page 1327-A; and

For Notification enforcing certain provisions of the Ordinance, in Baluchistan,' see the Law Department, Government of Baluchistan Notification No. Legis-3/15/Law/75, dated the 23rd December, 1975, Gazette of Baluchistan, Ext., dated the 23rd December, 1975.

3 Certain words added by Act 19 of 1973, s. 2.

4 Ins. by the Law Reforms

1[3. Appeal to High Court in certain cases. —(1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction.

(2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a single Judge of that Court under 2[clause (1) of Article 2[199] of the Constitution of the Islamic Republic of Pakistan] not being an order made under sub-paragraph (i) of paragraph (b) of that clause :

Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article 2[199] arises out of any proceedings in which the law applicable provided for at least one appeal 3[or one revision or one review] to any court, tribunal or authority against the original order.

(3) No appeal shall lie under sub-section (1) or sub-section (2) from an interlocutory order or an order which does not dispose of the entire case before the Court.

(4) Nothing contained in this Ordinance shall be construed as affecting—

(a) any appeal under the provisions of the Letters Patent applicable to a High Court or under section 102 of the Code of Civil Procedure, 1908 (V of 1908), which was pending immediately before the commencement of this Ordinance; or

(b) any appeal or petition for leave to appeal from a decree, judgment or order of a single Judge of a High Court made to the Supreme Court before the commencement of the Law Reforms (Amendment) Ordinance, 1972.].

4[4. Computation of period of limitation. In computing the period of limitation for filing an appeal under the provisions of section 3, the period commencing the fourteenth of April, 1972, or the date of the decree or order against which the appeal is to be filed, whichever shall be later, and the date of the commencement of the Law Reforms (Amendment) Act, 1972, shall be excluded].

5[5. Saving. Notwithstanding anything contained in this Ordinance,—

(a) the trial of a warrant case which was pending before a Magistrate immediately before the twenty-first day of December, 1975, and in which charge had been framed; or .

(b) any inquiry into a case triable by the Court of Session or High Court in which charge was framed, or in which the accused was committed for trial by the Court of Session or the High Court before the twenty-first day of December, 1975; shall be proceeded with and completed as-if the provisions of the Schedule to this Ordinance relating to amendments in the Code of Criminal Procedure, 1898 (Act V of 1898.), had not come into force:

Provided that any such case decided by a Magistrate, or any case in which the accused was committed for trial by the Court of Session or the High Court and decided by it, on or after the said twenty-first day of December, 1975; but before the commencement of the Law Reforms (Amendment) Ordinance, 1976, by following the procedure provided in the said Code as amended by this Ordinance, shall be deemed to have been validly decided.]

1 Subs, and shall be deemed always to have been so subs, by the Law Reforms (Amdt.) Act, 1972 (8 of 1972), s. 2 {w.e.f. 14-4-72}.

2 Subs, by the Law Reforms (Amdt.) Act, 1975 (6 of 1975), s. 2.

3 Ins. *ibid.*,

4 Added by Act. 8 of 1972, s. 3.

5 Added by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.,

THE SCHEDULE

[See section 2 (1)]

1 2 3 4

1 * * * * *

1898

V

The Code of Criminal Procedure, 1898

1. In section 4, in sub-section (1), clauses (e), (v) and (w) shall be omitted. Procedure,

2. For section 6, the following shall be substituted, namely :—

"6. Classes of Criminal Courts and Magistrates.—(1) Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be two classes of Criminal Courts in

Pakistan, namely :—

I. Courts of Session; ,

II. Courts of Magistrates.

(2) There shall be the following classes of Magistrates, namely:—

I. Judicial Magistrates.—

(1) Magistrates of the first class.

(2) Magistrates of the Second class.

1All the entries relating to the amendments of the Acts and Ordinance 1898 have been omitted by the federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and II Sch.,

(3) Magistrates of the third class.

(4) Special Judicial Magistrates.

II. Executive Magistrates.—

(1) District Magistrates.

(2) Additional District Magistrates.

(3) Sub-divisional Magistrates.

(4) Special Executive Magistrates."

1[(5) Magistrate of the first class.

(6) Magistrate of the second class.

(7) Magistrates of the third class.]

2[2A. In section 10, in sub-section (3), for the commas, figures, words and brackets", 407, sub-section (2) and 528, sub-sections (2) and (3)" the words, figures, comma and brackets "and 407, sub-section (2)" shall be substituted.]

3. For section 10, the following shall be substituted, namely:—

"10. District Magistrates—(1) In every district, the Provincial Government shall appoint a District Magistrate.

(2) The Provincial Government may also appoint Additional District Magistrates to exercise jurisdiction in one or more districts, and such Additional District Magistrates shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the Provincial Government may direct.

4. In section 12, in sub-section (1), the commas and words ", besides the District Magistrate,", and the words and comma "the Provincial Government or the District Magistrate, subject to the control of the Provincial Government" shall be omitted.

5. In section 13, for the words "Magistrate of the first or second class" the words "Executive Magistrate" shall be substituted.

6. For section 14, the following shall be substituted, namely :—

"14. Special Judicial and Executive Magistrates.—(1) The Provincial Government may, on the recommendation of the High Court, confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area.

1 New serial numbers and entries added by the Legal Reforms Act. 1997 (23 of 1997) s. 3.

2 Item 2A ins. by the Law Reforms (Amdt.) Act, 1976 {21 of 1976}. s. 2 and Sch..

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term as the Provincial Government may, in consultation with the High Court, by general or special order, direct.

(3) The Provincial Government may also appoint Executive Magistrates for particular areas or for performance of particular functions and confer upon them all or any of the powers conferred or conferrable

by or under this Code on an Executive Magistrate.

(4) Such Magistrates shall be called Executive Magistrates and shall be appointed for such term as the Provincial Government may, by general or special order, direct:

Provided that no powers shall be conferred under this sub-section on any Police Officer below the grade of Assistant Superintendent and no power shall be conferred on a Police Officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate and for performance the Officer of any other duties imposed upon him by any law for the time being in force.

(5) The Provincial Government may delegate, subject to such limitations as it thinks fit, to any officer under its control the powers conferred by sub-section (3)."

7. In section 15, in sub-section (1), for the word "Magistrates" the words "Judicial Magistrates" shall be substituted.

8. In section 16, the words and commas "or, subject to the control of the Provincial Government, the District Magistrate may," shall be omitted.

9. In section 17,—

(i) for sub-sections (1) and (2) the following shall be substituted, namely:—

"Subordination of Judicial Magistrates and Benches to Sessions Judge.—(1) All Judicial Magistrates appointed under sections 12 and 14, and all Benches constituted under section 15, shall be subordinate to the Sessions Judge, and he may, from time to time, make rules or give special orders consistent with this Code and any rules framed by the Provincial Government under section 16, as to the distribution of business among such Magistrates and Benches.

Subordination of Executive Magistrates to District Magistrate.—

(2) All Executive "Magistrates appointed under sections 1[12, 13] and 14 shall be subordinate to the District Magistrate and he may, from time to time, make rules or give special orders consistent with this Code and any rules framed by the Provincial Government under section 16, as to the distribution of business among such Magistrates.

1 Subs. by the Legal Reforms Act, 1997 (23 of 1997), s. 3 for figure "13".

Subordination of Executive Magistrates to Sub-divisional Magistrate.—(2A) Every Executive Magistrate (other than a Sub-divisional Magistrate) in a Sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.";

(ii) in sub-section (4), the words and commas "or, if there be no Additional or Assistant Sessions Judge, by the District Magistrate," and the words "or Magistrate" shall be omitted; and

(iii) sub-section (5) shall be omitted.

10. For section 22, the following shall be substituted, namely :—

"22. Appointment of Justices of the Peace.—The Provincial Government may, by notification in the official Gazette, appoint, for such period as may be specified in the notification, and subject to such rules as may be made by it, any person who is a citizen of Pakistan and as to whose integrity and suitability it is satisfied to be a Justice of the Peace for a local area to be specified in the notification, and more than one Justice of the Peace may be appointed for the same local area.

22A. Powers of Justices of the Peace.—(I) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a police officer referred to in section 54 and of an officer in charge of a police-station referred to in section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under sub-section (1) shall, forthwith, take or cause to be taken the person arrested before the officer in charge of the nearest police-station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re-arrest the person.

(3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him—

(a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and

(b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquility.

(4) Where a member of the police force on duty has been called upon to render aid under sub-section (3), such call shall be deemed to have been made by a competent authority.

(5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government,—

(a) issue a certificate as to the identity of any person residing within such area, or

(b) verify any document brought before him by any such person, or

(c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate,

and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

22B. Duties of Justices of the peace.—Subject to such rules as may be made by the Provincial Government, every Justice of the Peace for any local area shall—

(a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the nearest Magistrate and to the officer in charge of the nearest police-station;

(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of anything from, or the interference in any way with, the place of occurrence of the offence;

(c) when so requested in writing by a police-officer making an investigation under Chapter XIV in respect of any offence committed within such local area,—

(i) render all assistance to the police-officer in making such an investigation;

(ii) record any statement made under expectation of death" by a person in respect of whom a crime is believed to have been committed."

1[11. In section 28, in clause (c), for the full stop at the end a colon shall be substituted, and thereafter the following proviso shall be added, namely :—

Provided that the offences falling under Chapters VIII, X, XIII and XIV of the Pakistan Penal Code (Act XLV of 1860), except offences specified in section 153A and section 281 of the said Code, shall be tried by the Executive Magistrates and the expression "Magistrate" used in the said eighth column shall mean Executive Magistrate of the respective class.]

1 Subs by the legal Reforms Act 1997 (23 of 1997) s. 3 for "item 11".

1[11 A. In section 29, in sub-section (2), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added namely:—

Provided that the offences punishable with imprisonment for a term not exceeding three years, with or without any other punishment, shall be tried by the Executive Magistrates.]

12. For section 29-B the following shall be substituted, namely:—

"29-B. Jurisdiction in the case of juveniles.—Any offence, other than one punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before a Court is under the age of fifteen years, may be tried by any Judicial Magistrate especially empowered by the Provincial Government to exercise the powers conferred by section 8, sub-section (1), of the Reformatory Schools Act, laid, or, in any area in which the said Act is not applicable, by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby."

2[12-A In section 30, the words and comma "and the District of Sylhet,1 shall be omitted.]

3[13. In section 30, for the words, figure and comma "section 29, invest the District Magistrate or any" the words, figures and comma "sections 28 and 29, invest any Judicial" shall be substituted.]

4* * * * *

5[15. In section 32, in sub-section (1),—

(i) for the words "two years" the words "three years"; for the words "one thousand" the words "five thousand"; for the words "six months" the words "one year"; and for the words "two hundred" the words "one thousand" shall respectively be substituted; and

6* * * * *

7* * * * *

1 New item 11A ins. ibid.

2 Item 12A ins. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.,

3Subs. by the Legal Reforms' Act, 1997 (23 of 1997) s. 3 for "item 13".

4 Item 14 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (w.e.f. 24-4-74).

5 Subs. by Act 21 of 1976, s. 2 and Sch., for item 15.

6 Sub-item (ii) of item. 15 and item 16 omitted by Act 23 of 1997, s. 3.

7 Sub-item (i), of item 17 omitted by Act 25 of 1974, s. 2 and Sch., (24-4-74).

(ii) in sub-section (2), in clause (b) of the proviso, the brackets, words and figure "(other than a Magistrate acting under section 34)" shall be omitted.

18. In section 36, for the words and commas "District Magistrates, Sub-Divisional Magistrates and the Magistrates of the first, second and third classes," the words "Judicial and Executive Magistrates" shall be substituted.

19. For section 37 the following shall be substituted, namely:

"37. Additional Powers conferrable on Magistrates.—In addition to his ordinary powers, any Magistrate may be invested by the Provincial Government with any powers specified in the fourth schedule :

Provided that, in the case of a Judicial Magistrate, such powers shall be conferred on the recommendation of the High Court:

Provided further that the Provincial Government may authorise a District Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part II of the fourth schedule."

20. In section 41, in sub-section (1) for the full-stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:—

"Provided that, in the case of a Judicial Magistrate, the withdrawal of such powers shall not be made except on the recommendation of the High Court."

21. In section 42, after the word "Magistrate", the comma and words ", Justice of the Peace" shall be inserted.

I[22. In section 44,—

(i) for sub-section (1) the following shall be substituted, namely:—

“(1) Every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Pakistan Penal Code, namely, 121,121A, 122,123, 123A, 124,124A, 125,126,130, 143, 144, 145,147,148,153A, 161,162,163,164,165,168,170,231,232, 255, 302, 303, 304, 304A, 364A, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449,450, 456, 457, 458,459,460 and 489A shall, in the absence of reasonable excuse the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention; and

(ii) In sub-section (1) substituted as aforesaid, after the word "Magistrate" the comma and words "Justice of the Peace" shall be inserted.]

23. In section 45, in sub-section (1), after the word "Magistrate" occurring for the first time, the words "or Justice of the Peace" shall be inserted.

1 Subs. by the Law (Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch., for item 22.

1*****

25. In section 57, in sub-section (2), after the word "Magistrate", the words and comma "having jurisdiction," shall be inserted.

26. In section 68, in sub-section (2), for the full-stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:—

"Provided that the Court may, at the request of the complainant or the accused, allow him to serve the summons on his own witnesses".

27. In section 69, in sub-section (2), the words and comma "if so required by the serving officer," shall be omitted.

28. In section 70, the commas and words ", if so required by the serving officer," shall be omitted.

29. In section 72, in sub-section (1), for the words "Railway Company" the words "a statutory body or a company" shall be substituted.

30. In section 74, in sub-section (1), for the word "officer" the word "person" shall be substituted.

31. In section 86, in sub-section (1), for the full-stop at the end a colon shall be substituted and thereafter the following further proviso shall be added, namely:—

"Provided further that if the offence is not bailable or not direction has been endorsed under section 76 on the warrant, the Sessions Judge of the Sessions division in which the person is arrested may, subject to the provisions of section 497 and for sufficient reasons, release the person on an interim bail on such bond or security as the Sessions Judge thinks fit and direct the person to appear by a specified date before the Court which issued the warrant and forward the bond to that Court".

2[32. After section 86, the following new section 86A shall be inserted, namely:—

"86A. Procedure for removal in custody to Tribal Area.— Where a person arrested under section 85 is to be removed in custody to any place in the Tribal Areas, he shall be produced before a Magistrate within the local limits of whose jurisdiction the arrest was made, and such Magistrate in directing the removal shall hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including the power to order the production of evidence, as if the person arrested were charged with an offence committed within the jurisdiction of such Magistrate; and such Magistrate shall direct the removal of the arrested person in custody if he is satisfied that the evidence produced before him raises a strong or probable presumption that the person arrested committed the offence mentioned in the warrant'.

1 Item 24 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (w.e.f. 24-4-74).2 Subs. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch., for item 32.

1*****

33. In section 87, in sub-section (1), for the words and brackets "has reasons to believe (whether after taking evidence or not)" the words "is satisfied after taking evidence" shall be substituted.

34. In section 88,—

(i) in sub-section (6) for the words and figure " Chapter XXXVI of the Code of Civil Procedure" the words and figures "Order XL of the Code of Civil Procedure, 1908" shall be substituted; and

(ii) in sub-section (6Q, the words and comma "of the first or second class," shall be omitted.

35. In section 90, the words "other than a juror or assessor" shall be omitted.

2[36. In section 98,—

(i) in sub-section (1),—

(a) for the words and comma " or coin, or instruments or materials for counterfeiting coin or stamps" the commas and words", bank notes, currency notes or coin or instruments or materials for counterfeiting coin, stamps, bank notes or currency notes" shall be substituted;

(b) the commas and words ", if a District Magistrate, or a Sub-divisional Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used" shall be omitted;

(c) in clause (c), after the words " stamps ", the commas and words ", bank notes, currency notes" shall be inserted;

(d) in clause (d), after the word and comma "stamps,", the words and commas "bank notes, currency notes," shall be inserted; and

(e) in clause (e), after the word and comma "stamps,", the words and commas "bank notes, currency notes," shall be inserted and for the words "or stamps" the commas and words ", stamps, bank notes or currency notes" shall be substituted; and

(ii) in sub-section (2), for the words, figures and comma "section 19 of the Sea Customs Act, 1878 "the words, figures and comma " section 16 of the Customs Act, 1969" shall be substituted.]

1 Item 32A omitted by the Legal Reforms Act, 1997 (23 of 1997), s. 3.

2 Subs, by Act 21 of 1976 for "item 36".

37. In section 99A, for the words, figure and commas " Press and Registration of books Act, 1867," the words, figures and commas* * * West Pakistan Press and Publications Ordinance, 1963, or any other law relating to press and publications for the time being in force," shall be substituted.

38. Section 99B shall be re-numbered as sub-section (I) of that section and—

(i) in sub-section (1), re-numbered as aforesaid, after the words, figure, letter and comma "under section 99A,", the words "or any other law for the time being in force" shall be inserted; and.

(ii) after sub-section (1) re-numbered and amended as aforesaid, the following new sub-section shall be added, namely:—

"(2) Nothing in sub-section (1) shall apply to a case where the order of forfeiture has been made—

(a) in respect of a newspaper, book or other document printed outside Pakistan; and

(b) in respect of a newspaper, book or other document on the conviction, in respect of such newspaper, book or other document, of the author or editor thereof for any of the offences referred to in sub-section (1) of section 99A."

39. Section 99C shall be omitted.

40. In section 99D—

(i) in sub-section (1), for the words "Special Bench" the words "High Court" shall be substituted; and

(ii) sub-section (2) shall be omitted.

41. In section 106,—

2* * * * *

(ii) in sub-section (3), for the words and figures "including a Court hearing appeals under section 407 or by the High Court when" the words "or by a Court" shall be substituted.

42. In section 107, in sub-section (1),—

(i) for the commas and words ", District Magistrate, Sub-divisional Magistrate or Magistrate of the first class" the words "District Magistrate or Sub-divisional Magistrate or an Executive Magistrate specially empowered in this behalf by the Provincial Government or the District Magistrate" shall be substituted; and

1 Certain words omitted by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.

2 Sub-item (i) omitted by the Legal Reforms Act, 1997 (23 of 1997), s. 3.

ii) for the words "one year" the words "three years" shall be substituted.

43. In section 108,—

(i) for the commas and words ", or a Magistrate of the first class" the words "or Sub-divisional Magistrate or an Executive Magistrate" shall be substituted; and

(ii) for the commas, words and figure ", the rules laid down in the Press and Registration of Books Act, 1867," the commas, words and figures ", the provisions of 1* * * the West Pakistan Press and Publications Ordinance, 1963, or any other law relating to press and publications for the time being in force" shall be substituted.

44. In section 109,—

(i) for the commas and words ", District Magistrate, Sub-divisional Magistrate or a Magistrate of the first class" the words "District Magistrate or Sub-divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf" shall be substituted; and

(ii) for the words "one year" the words "three years" shall be substituted.

45. In section 110, for the words "a Magistrate of the first class" the words "an Executive Magistrate" shall be substituted.

46. In section 117, for sub-section (2), the following shall be substituted, namely:—

"(2) Such inquiry shall be made, as nearly as may be practicable, in the manner prescribed in Chapter XX for conducting trials and recording evidence, except that no charge need be framed.

47. In section 126, for the comma and the words ", Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub; divisional Magistrate" shall be substituted.

48. In section 127, in sub-section (1), for the word "Magistrate" the words "Executive Magistrate" shall be substituted.

49. In section 128—

(i) for the word " Magistrate" the words" Executive Magistrate " shall be substituted; and

(ii) the words, comma and figure "or a volunteer enrolled under the Indian Volunteers Act, 1869" shall be omitted.

50. In section 129, for the word "Magistrate" the words "Executive Magistrate" shall be substituted.

1 Omitted by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.,

51. In section 130, in sub-section (1), the words, commas and figure "or of any volunteers enrolled under the Indian Volunteers Act, 1869," shall be omitted.

52. In section 131,—

(i) for the words "no Magistrate" the words "no Executive Magistrate" shall be substituted; and

(ii) for the words " a Magistrate" the words "an Executive Magistrate" shall be substituted.

53. In section 132, in clause (d), the words and comma " or volunteer," shall be omitted.

54. In section 133 —

(i) in sub-section (1), for the words "a Magistrate of the first class" the -words "an Executive Magistrate" shall be substituted; and

(ii) for the words "Magistrate of the first or second class" the words "Executive Magistrate" shall be substituted.

55. In section 137, in sub-section (1), for the words "as in a summons-case" the words "in the manner provided in Chapter XX" shall be substituted.

56. In section 143, for the words "any other Magistrate" the words "any other Executive Magistrate" shall be substituted.

57. In section 144, words and brackets "Magistrate (not Magistrate of the third class)" the words "Executive Magistrate" shall be substituted.

58. In section 145, in sub-section (1), for the comma and words ", Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf" shall be substituted.

1[58A. In section 146, in sub-section (2), for the words "Code of Civil Procedure" the words, comma and figure "Code of Civil Procedure, 1908" shall be substituted.]

59. In section 147, in sub-section (1), for the comma and words ", Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or an Executive Magistrate specially empowered by the Provincial Government in this behalf" shall be substituted.

60. In section 155,—

2* * * * *

(ii) in sub-section (2), for the words and comma "or commit the same for trial, or of a Presidency Magistrate" the words "or send the same for trial to the Court of Session" shall be substituted.

61. In section 156, after sub-section (3), the following new sub-section shall be added, namely :—

"(4) Notwithstanding anything contained in sub-section (1), (2) or (3), no police-officer shall investigate an offence under section 497 or section 498 of the Pakistan Penal Code, except

1 Item 58-A ins. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.

2 Sub-item (i) omitted by the legal reforms act, 1997 (23 of 1997) s.3.

upon a complaint made by the husband of the woman, or, in his absence, by some person who had the care of such woman on his behalf at the time when such offence was committed."

62. In section 164, after sub-section (1), the following new sub-section shall be added, namely:—

"(1-A) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement."

63. In section 167,

1* * * * *

2[(iA) in sub-section (1), the following explanation shall be added at the end, namely:—

"Explanation.—For the purpose of this section, in the cases triable by the Executive Magistrates, the expression "nearest Magistrate" means the Executive Magistrate and in all other cases the Judicial Magistrates.]

(ii) in sub-section (2), for the word "commit" the word " send" shall be substituted; and

(iii) for sub-section (4), the following shall be substituted, namely:—

"(4) The Magistrate giving such order shall forward a copy of his reasons for making it, to the Sessions Judge."

64. In section 169, for the word 'commit" the word "send" shall be substituted.

65. In section 170,—

(i) in sub-section (1), for the word "commit" the word send" shall be . substituted; and

(ii) sub-section (3) shall be omitted.

66. In section 174, in sub-section (5), for the words and comma " Magistrate of the first class, and any Magistrate" the words "any other Executive Magistrate" shall be substituted.

67. In section 178,—

(i) for the words " committed for trial in any district may be tried in any sessions division" the words "in any district sent for trial to a Court of Session may be tried in any sessions division " shall be substituted; and

(ii) for the proviso the following shall be substituted, namely :—

"Provided that such direction is not repugnant to any direction previously issued by the High Court under section 526 of this Code or any other law for the time being in force.

3* * * * * 69. In section 187, in sub-section (1), for the words and comma "by a Magistrate other than a District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate" the comma and words ", the Magistrate Issuing the Warrant shall send the arrested person to the Sessions Judge" shall be substituted.

1 Sub-item (i) omitted by the Legal Reforms Act, 1997 (23 of 1997), s. 3.

2 New sub-item (iA) ins, ibid.,

3 item 68 omitted ibid.,

70. In section 190 —

1 * * * * *

2 [(ii) for sub-section (2) the following shall be substituted, namely :—

"(2) The Provincial Government may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b) of offences for which he may try or send to the Court of Session for trial:

Provided that in the case of a Judicial Magistrate the Provincial * Government shall exercise this power on the recommendation of the High Court.]

(ii A) in sub-section (2), for the words "commit for trial" the words "send, to the Court of Session for trial" shall be substituted; and

(iii) for sub-section (3), the following shall be substituted, namely:—

"(3) A Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence, send the case to the Court of Session for trial]."

3 [70A. In section 191, for the word "committed" the word "sent" shall be substituted.]

71. For section 191 the following shall be substituted, namely:—

"191. Transfer on application of the accused.—When a Magistrate takes cognizance of an offence under sub-section (1) clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Courts and, if the accused, or any of the accused if there be more than one, objects to being tried by such magistrate, the case shall, instead of being tried by such Magistrate, be sent 4["in the case of Judicial Magistrate, to the Sessions Judge, and in the case of Executive Magistrate, to the District Magistrate" shall be substituted] for transfer to another Magistrate."

5 [71A. In section 192, in sub-section (2), for the words "commit him" the words "send him to the Court of Session" shall be substituted.]

6 [72. In section 192.—

(i) in sub-section (1), for the full stop at the end a colon shall be substituted, and thereafter the following proviso shall be added, namely :—

"Provided that if the offence is triable by a Judicial Magistrate the case shall be sent to the Court of Session for transfer to such Magistrate.";

(ii) for sub-section (2) the following shall be substituted, namely :— "

(2) Any District Magistrate may empower any Executive Magistrate subordinate to him, who has taken cognizance of any case, to transfer such case for inquiry or trial to any other Executive Magistrate in his district who is competent under this Code to try the accused; and such Magistrate may dispose of the case accordingly;" ; and

1 Sub-item (i) omitted by the Legal Reforms Act, 1997 (23 of 1997) s.3.

2 Subs. *ibid.*, for sub-item (ii) which was previously subs. by Act 21 of 1976, s.2 and sch.,

3 item 70A ins. by the Law Reforms (Amdt.) Act, 1976 (21 of 1973) s.2 and sch.,

4 Sub-item (i) omitted by the Legal Reforms Act, 1997 (23 of 1997), s. 3.

5 Subs. *ibid.*, for sub-item (ii) which was previously subs. by Act 21 of 1976, s. 2 and Sch.,

6 Item 70A ins. by the Law Reforms (Amdt.) Act 1976 (21 of 1976), s. 2 and sch.,

(iii) after sub-section (2), substituted as aforesaid, the following section (3) shall be added, namely :—

"(3) A Sessions Judge may empower any Judicial Magistrate, who has taken cognizance of any case, to transfer such case for trial to any other Judicial Magistrate in his district, and such Magistrate may dispose of the case accordingly.]

73. In section 193, in sub-section (1), for the words "unless the accused has been committed to it by a Magistrate duly empowered in that behalf", the words, figures and brackets "unless the case has been sent to it under section 190, sub-section (3)" shall be substituted.

74. In section .194, the words "upon a commitment made to it" shall be omitted.

75. In section 195, in sub-section (2), for the words, comma and figure " Indian ; Registration Act, 1877", the words, comma and figure " Registration Act, . 1908" shall be substituted.

1* * * * *

77. In section 199, for the words, figures and commas beginning with the words "No Court" and ending with the words "was committed" the following shall be substituted, namely:—

"No Court shall take cognizance of an offence under section 497 #r section 498 of the Pakistan Penal Code, except— .

(a) upon a report in writing made by a police-officer on the complaint of the husband of the woman, or in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed: or

(b) upon a complaint made by the husband of the woman or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed."

2[78. In section 200, in clause (a) of the" proviso, after the word and figure "section 192." the comma and words, 'or sending it to the Court of Session' shall be added.].

3[79. For section 202 the following shall be substituted, namely:—

'202. Postponement of issue of Process.—(1) Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, or which has been sent to it under section 190, sub-section (3), or transferred to it under section 191 or section 192, may, if it thinks fit, for reasons to be recorded, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case itself or direct an inquiry or investigation to be made by a police officer, or by such other person as it thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.

(2) A Court of Session may, instead of directing an investigation under the provisions of sub-section (1), direct the investigation to be made by any Magistrate subordinate to it for the purpose of ascertaining the truth or falsehood of the complaint.

(3) If any inquiry or investigation under this section is made by a person not being a Magistrate, or a police-officer, such person shall exercise all the powers conferred by this Code on an officer-in-charge of a police-station, except that he shall not have power to arrest without warrant.

1 Item 76 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (w.e.f. 24-4-74).

2 Subs. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s- 2 and Sch., for "Item 78".

3 Subs, ibid., for "Item 79".

(4) Any Court inquiring into a case under this section may, if it thinks fit, take evidence of witnesses on oath,

79A. In section 202 substituted as aforesaid,—

(i) in sub-section (1), after the words 'made by', the words and comma . 'any Justice of the Peace, or by' shall be inserted; and

(ii) in sub-section (3), after the words and comma "Magistrate,", the words "or justice of the Peace" shall be inserted.

79B. In section 203,—

(i) for the word "Magistrate" the word "Court" shall be substituted; and

(ii) after the word " transferred ", the words " of sent" shall be inserted.]

80. In Chapter XVII, in the heading, for the word "MAGISTRATES" the word "COURTS" shall be substituted.

81. In section 204,—

(i) in sub-section (1), for the word "Magistrate" the word "Court" for the word "he" the word "it" and for the word "himself" the word "itself shall respectively be substituted ; and

(ii) in sub-section (3), for the word "Magistrate" the word "Court" shall be substituted.

82. Chapter XVIII shall be omitted.

83. In section 225, in Illustration (d), for the words "inquiry before the Magistrate" the word "trial" shall be substituted.

84. Section 226 shall be omitted.

85. In section 227, in sub-section (1), the commas and words ", or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed" shall be omitted.

1[85A. In section. 228 the words and figure "section 226 or" shall be omitted.

85B. In section 232, in sub-section (1), after the words "High Court", the comma and words ", or the Court of Session" shall be inserted.].

86. In Chapter XX, in the heading, for the word " Summons-Cases" the word "Cases" shall be substituted.

87. In section 241, for the word "summons-cases" the word "cases" shall be substituted.

88. After section 241, the following new section 241-A shall be inserted, namely:—

"241-A. Supply of statements and documents to the accused.—(1) In all cases instituted upon police report, except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statements of all witnesses recorded under sections 161 and 164 and of the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial:

1 Items 85A and 85B ins. by the Law Reforms (Amdt) Act. 1976 (21 of 1976). s. 2 and Sch.,

Provided that, if any part of a statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing, the complainant shall—

(a) state in the petition of complaint the substance of- the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at the trial; and

(b) within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which he has filed with his complaint as the number of the accused:

Provided that the provisions of this sub-section shall not apply in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties."

89. For section 242 the following shall be substituted namely :-

"242. Charge to be framed.—When the accused appears or is brought before the Magistrate, a formal charge shall be. framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged."

90. In section 243, for the words "of which he is accused" the words "with which he is charged" shall be substituted.

91. In section 244,—

(i) for sub-section (2) the following shall be substituted, namely:—

"(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing"; and

(ii) in sub-section (3), for the full-stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:—

"Provided that it shall not be necessary for the accused to deposit any such expenses in Court in cases where he is charged with an offence punishable with imprisonment exceeding six months.

92. After section 244, the following new section shall be inserted, namely:—

"244-A. Statement made under section 164.—The statement of a witness duly recorded under section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, 1872."

93. In section 245, in sub-section (2), the words and figures "or section 562" shall be omitted.

94. After section 245, the following new section 245-A shall be inserted, namely:—

"245-A. Procedure in case of previous conviction.- in a case where a previous Conviction is charged under the provisions of section 221, subsection (7) and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the accused under section 243, or under section 245, sub-section (2), take evidence in respect of the alleged previous conviction, and, if he does so shall record a finding thereon."

95. Section 246 shall be omitted.

1[95A. In Section 247, in the proviso, for the full stop at the end a colon shall be substituted and thereafter the following further proviso shall be added, namely:-

'Provided further that nothing in this section shall apply where the official the accused is charged is either cognizable or non-compounable.'.]

2[96. In section 249, for the words "District Magistrate" the words "Sessions Judge in the case of Judicial Magistrate and District Magistrate in the case of Executive Magistrate" shall be substituted.]

97. In the heading above section 250, for the words "Summons and Warrant Cases 99 the words "Cases tried by Magistrate99 shall be substituted

98. In section 250,—

(i) in sub-section (I), the words "discharges or" and the words "discharge or" shall be omitted;

(ii) in sub-section (2), for the words "one hundred rupees" the words "five hundred rupees9' shall be substituted;. and

(iii) in sub-section (2 A), for the words "thirty days" the words three months" shall be substituted.

99. Chapter XXI shall be omitted.

100. In section 260, in sub-section (1),—

(i) the brackets, letter, words and comma "(a) the District Magistrate," shall be omitted;

(ii) in clauses (d), (e), (f) and (g), for the words "fifty rupees" the words 3[two thousand and five hundred rupees] shall be substituted; and

(iii) the proviso shall be omitted.

101. In section 261, after the words "Provincial Government may" the commas and words "on the recommendation of the High Court," shall be inserted.

1 Item 95 ins. by the Law Reforms (Amdt,) Act, 1976 (21 of 1976), a. 2 and Sch.

2 Item 96 subs, by the Legal Reforms Act, 1997 (23 of 1997)s. 3.

3 Subs. by Act 21 of 1976, s. 2 and sch., for "two hundred and fifty rupees

102. In section 262, for sub-section (1) the following shall be substituted, namely:—

"(1) In trials under this Chapter, the procedure prescribed in Chapter XX shall be followed, except as hereinafter mentioned."

1[103. For section 264 the following shall be substituted, namely:-

'264. Record in appealable cases.—In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case'.]

104. After Chapter XXII, the following new Chapter XXIIA shall be inserted, namely:—

CHAPTER XXIIA

Trials before High Courts and Courts of Session

265A. Trial before Court of Session to be conducted by Public Prosecutor.—In every trial before a Court of Session initiated upon a police report, the prosecution shall be conducted by Public Prosecutor.

265B. Procedure in cases triable by High Courts and Courts of Session.— The following procedure shall be observed by the High Courts and the Courts of Session in the trial of cases triable by the said Courts.

265C. Supply of statements and documents in the accused.—(1) In all cases instituted upon province report, copies of statements of all witnesses recorded under sections 1 and 164 or the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not later than seven days before the commencement of the trial:

Provided that if any part of a statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing, the complainant shall-

(a) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at trial; and

(b) within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the Accused, as many copies of the complaint and any other document which he has filed with his complaint, as the number of the accused :

Provided that the provisions of this sub-section shall not apply in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.

265D. Evidence for Prosecution.—(1) When the accused appears or is brought before the Court, such Court shall proceed to hear the complainant (If any) and take all such evidence as may be produced in support of the prosecution:

1Ins by the Law Reform (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.. for "item 103".

Provided that the Court shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Court shall ascertain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before itself such of them as it thinks necessary.

265E. Discharge of accused.—(1) If, upon taking all the evidence referred to in section 265D, and making such examination (if any) of the accused as the Court thinks necessary, it finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Court shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Court from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Court, it considers the charge to be groundless.

265F. Charge to be framed when offence appears proved.—If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Court is of opinion that there is ground for presuming that the accused has committed an offence, it shall frame in writing a charge against the accused.

265G. Plea.—(1) The charge shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

265H. Procedure in case of previous conviction.—In a case where a previous conviction is charged under the provisions of section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Court may, after it has convicted the said accused under section 265 G, sub-section (2), or section 265M, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.

265I. Recall of Prosecution witnesses for cross-examination and re-examination.—If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state, at the commencement of the next hearing of the case or, if the Court for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they*shall be discharged. The evidence of any remaining witnesses

for the prosecution shall next be taken and, after cross-examination and reexamination (if any), they also shall be discharged.

265 J. Statement made under section 164 admissible.—The statement of a witness duly recorded under section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, 1872.

265 K. Procedure after examination of witnesses for prosecution.—(1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(2) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then record a finding of not guilty.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then record a finding of not guilty.

(4) If the accused or any of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence and produce his evidence.

(5) If the accused puts in any written statement, the Court shall file it with the record.

265L. Procedure for compelling production of evidence at instance of accused.—If the accused, after he has entered upon his defence, applies to the Court to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Court shall issue such process unless it considers, that it is for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by it in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Court is satisfied that it is necessary for the purposes of justice.

265M. Acquittal.—(1) If in any case under this Chapter in which a charge has been framed the Court finds the accused not guilty, it shall record an order of acquittal.

Conviction.—(2) If in any case under this Chapter the Court finds the accused guilty, it shall pass sentence upon him according to law.

265N. Power of Advocate-General to stay Prosecution.—At any stage of any trial before a High Court under this Code, before the delivery of the judgment, the Advocate-General may, if he thinks fit, inform the Court on behalf of Government that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

265O. Time of holding sittings.— For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

265P. Place of holding sitting—(1) The High Court shall hold its sittings at the place at which it held them immediately before the commencement of the Law Reforms Ordinance, 1972, or at such other place (if any) as the Provincial Government may direct.

(2) But the High Court may, from time to time with the consent of the Provincial Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give prior notice in the official Gazette of all sittings intended to be held for the exercise of the original, criminal jurisdiction of the High Court."

105. Chapter XXIII shall be omitted.

1*****

107. For section 338 the following shall be substituted, namely:-

338. Power to grant or tender Pardon— At any before the judgment is passed the High court or the court of session trying the cause may, with the view of obtaining on the trial the evidence of any person supposed to

have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the District Magistrate to tender, a pardon on the same condition to such person.”.

108. For section 339A the following shall be substituted, namely:—

"339A. Procedure in trial of person under section 339.—(1) The Court trying under section 339 a person who has accepted a tender of pardon shall, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and shall, before judgement is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgement of acquittal.”.

109. In section 340, for sub-section (2) the following shall be substituted, namely:—

"(2) Any person accused of an offence before a Criminal Court or against whom proceedings are instituted under this Code in any such Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges or allegations made against him or any person charged or tried together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except on his own request,

1Item 106 omitted by the Legal Reforms Act, .1997 (23 of 1997) s.3

(b) his failure to give evidence shall not be made comment by the prosecution or give rise to any presumption against him or any person charged or tried together with him at the same trial, and

(c) he shall not be asked, and, if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged or for which he is being tried, or is of bad character, unless,—

(i) th proof that he has committed or been convicted of such offence is admissible in evidence to show that he is guilty of the offence with which he is charged or for which he is being tried, or

(ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establishing his own good character, or has given evidence of his good character, or

(iii) he has given evidence against any other person charged with or tried for the same offence.”.

110. In section 341, the words "inquiry or" and the words and comma "if such inquiry results in a commitment, or" shall be omitted.

111. In section 342, in sub (2) the words and brackets "and the jury (if any) shall be omitted.

112. In section 345,-

1* * * * *

(ii) for sub-section (5) the following shall be substituted, namely

"(5) When the accused has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court before which the appeal is to be heard,"; and

(iii) in sub-section (5A), after the word and figure "section 439", the commas, words, figure and letter and a Court of Session so acting under section 439-A," shall be inserted.

113. For section 346 the following shall be substituted, namely:—

"346. Procedure of Magistrate in cases which he cannot dispose of.—(1) If, in the course of an inquiry or trial before a Magistrate in any district, the evidence appears to him to warrant a presumption that the case is one which should be tried, or sent for trial to the Court of Session or the High Court, by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to the Sessions Judge or to such other Magistrate, having jurisdiction, as the Sessions Judge directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself or send the case for trial to the Court of Session or the High Court.

1Sub. Item (i) of item 112 omitted by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.

114. For section 347 the following shall be substituted; namely :—

"347. Procedure when, after commencement of trial, Magistrate funds case should be tried by Court of Session or High Court.—If in any trial before a Magistrate, before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, he shall send the case to the Court of Session or High Court, for trial."

115. In section 348,—

(i) in sub-section (1),—

(a) for the words and commas "for committing the accused be committed to the Court of Session or High Court, as the case may be," the words and commas " for the trial of the accused by the Court of Session or High Court, as the case may be, send the accused for trial to such Court" shall be substituted; and

(b) the proviso shall be omitted; and

(ii) for sub-section (2), the following shall be substituted, namely :—

"(2) When any person is sent for trial to the Court of Session or High Court under sub-section (1), any other person accused jointly with him in the trial shall be similarly sent for trial."

116. In section 349,—

(i) in sub-section (1), for the words to District Magistrate or Sub-divisional Magistrate of the first class specially empowered on this behalf Provincial Government " shall be substituted; and

(ii) in sub-section (1A), for the words "District Magistrate or Sub-divisional Magistrate" the words, brackets and figure " Magistrate empowered under sub-section (1)" shall be substituted.

117. In section 350,—

(i) in sub-section (1), for the proviso the following shall be substituted, namely :—

"Provided that the High Court or the Court of Session may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial."; and

(ii) in sub-section (2), for the words "If superior Magistrate" the words "Magistrate specially empowered" shall be substituted.

118. In section 351, in sub-section (2), the words and figure "in the course of an inquiry under Chapter XVIII" shall be omitted.

119. In section 353, for the words, figures and commas "Chapters XVIII, XX, XXI, XXII and XXIII" the words, figures and commas and letter "Chapter XX, XXI, XXII and XXIIA" shall be substituted.

120. In section 355, in sub-section (1), for the words, figures, brackets, letters and commas "in summons cases tried before a Magistrate and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried" the words and figures "in cases tried under Chapter XX or Chapter XXII" shall be substituted.

121. In section 356, in sub-section (1), for the words, commas and figures " In all other trials before Courts of Session and Magistrates, and in all inquiries under Chapters XII and XVIII" the words and figure "In trials before Courts of Session and in inquiries under Chapter XII" shall be substituted.

122. In section 367, in sub-section (5), for the colon at the end a full-stop shall be substituted and the proviso shall be omitted.

1 * * * * *

124. In section 371,—

(i) for sub-section (1) the following shall be substituted, namely:—

"(1) In every case where the accused is convicted of an offence, a copy of the judgment shall be given to him at the time of pronouncing the judgment, or, when the accused so desires, a translation of the judgment in his own language, if practicable or in the language of the Court, shall be given to him without delay. Such copy or translation shall be given free of cost:

Provided that this sub-section shall not apply to cases tried summarily or where the accused is convicted of an offence under any law other than the Pakistan Penal Code."; and

(ii) sub-section (2) shall be omitted,

125. In section 375, for sub-section (2) the following shall be substituted, namely:—

"(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken."

126. In section 376, the words and comma "whether tried with the aid of assessors or by jury," shall be omitted.

1*****

128. After section 382, the following new sections shall be inserted, namely:—

"382-A. Postponement of execution of sentences of imprisonment under section 476 or for a period of less than one year.—Notwithstanding anything contained in section 383 or 391, where the accused:—

(a) is awarded any sentence of imprisonment under section 476, or

(b) is sentenced in cases other than those provided for in section 381, to imprisonment whether with or without fine or whipping, for a period of less than one year, the sentence shall not, if the accused furnishes bail to the satisfaction of the court for his appearance at such time and place as the Court may direct, be executed, until the expiry of the period prescribed for making an appeal against such sentence, or, if an appeal is made within that time, until the sentence of imprisonment is confirmed by the Appellate Court, but the sentence shall be executed as soon as practicable after the expiry of the period prescribed for making an appeal, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

1Items 123 and 127 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (W.e.f 24-4-74).

382-B. Period of detention to be considered while awarding sentence of imprisonment.—Where a Court decides to pass a sentence of imprisonment on an accused for an offence, it may take into consideration the period, if any, during which such accused was detained in custody for such offence."

1[382-C. Scandalous or false and frivolous pleas to be considered in passing sentence.—In passing a sentence on an accused for any offence, a Court may take into consideration any scandalous or false and frivolous plea taken in defence by him or on his behalf.]

129. In section 383,—

2*****

(ii) after the figure "381" the words, figure and letter "and section 382-A" shall be inserted.

130. In section 386, in sub-section (1), in the proviso, the words "unless for special reasons to be recorded in writing it considers it necessary to do so" shall be omitted.

2*****

3*****

137. In section 403, in the Explanation for the commas words and figure if the discharge of the accused or any entry made upon a charge under section 273," the words "or the discharge of the accused" shall be substituted.

4*****

139. For section 406A the following shall be substituted, namely:—

"406A. Appeal from order refusing to accept or rejecting a surety.- Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order to the Court of Session."

5[139A. In section 407, in sub-section (1), the words and figure 'or in respect of whom an order has been made, or a sentence has been passed under section 380 by a Sub-divisional Magistrate of the second class' shall be omitted.]

140. Section 407 shall be omitted.

141. In section 408,—

(i) for the comma and words ", a District Magistrate or other Magistrate of the first class" the words "or a Judicial Magistrate" shall be substituted;

1 Added by the law reforms (Amdt.) Act, 1972 (8 of 1972), s. 4 (w.e.f. 14-4 -72).

2 Subs item (i) of item 129 and items 131 to 135 omitted by the Criminal Procedure (Amdt.) Act. 1974 (25 of 1974), s. 2 and Sch(w,e,f 24-4-74)

3 Item 136 omitted by the Code of Criminal Procedure (Amdt.) Act. 1973 (57 of 1973), S. 5.

4 Item 138 omitted by the Legal Reforms Act 1997 23 of 1997) s. 3.

5 Item I39A ins. by the Law Reforms (Amdt.) Act1976 (21 of 1976). s. 2 and Sch.

(ii) the words and figure "or in respect of whom an order has been made or a sentence has been passed under section 380 by a Magistrate of the first class" shall be omitted; and

(iii) in clause (b) of the proviso,—

(a) the words and figure "or a Magistrate specially empowered under section 30" shall be omitted; and

1 * * * * *

142. For section 409 the following shall be substituted, namely :—

"409. Appeals to Court of Session how heard.—Subject to the provisions of this section, an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge or an Assistant Sessions Judge:

Provided that an Additional Sessions Judge shall hear only such appeals as the Provincial Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him:

Provided further that no such appeal shall be heard by an Assistant Sessions Judge unless the appeal is of a person convicted on a trial held by any Magistrate of the second class or third class."

143. In section 413, for the words "District Magistrate or other" the article "a" shall be substituted.

144. For section 417] The Following Shall be substituted namely

"417. Appeal in case of acquittal.—(1) Subject to the provisions of subsection (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)."

145. In section 418,—

(i) in sub-section (1), the commas and words except where the trial was by jury, in which case the appeal shall lie on a matter of law only" shall be omitted; and

(ii) sub-section (2) shall be omitted.

146. In section 419, the commas, words and figure and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367 " shall be omitted.

1 Clause (b) of sub-item (iii) of item 141 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (w.e.f. 24-4-74).

147. In section 423,—

(i) in sub-section (1),—

(a) in clause (a), for the words "committed for trial", the words "sent for trial to the Court of Session or the High Court" shall be substituted; and

(b) in clause (b), for the word "committed" the word "sent" shall be substituted; and

(ii) sub-section (2) shall be omitted.

148. In section 426,—

(i) after sub-section (1), the following sub-section (1 A) shall be inserted, namely:—

"(1A) An Appellate Court shall, unless for reasons to be recorded in writing it otherwise directs order a convicted person to be released on bail who has been sentenced—

(a) to imprisonment for a period not exceeding three years and whose appeal has not been decided within a period of six months of his conviction;

(b) to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided within a period of one year of his conviction;

(c) to imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two year of his conviction.";

(ii) in sub-section (2A), Before the word "Where the words, figure, letter and comma "Subject to the provision of section 382Af" shall be inserted; and

1 * * * * *

149. In section 428, in sub-section (3), the semi-colon and words "; but such evidence shall not be taken in the presence of jurors or assessors" shall be omitted.

150. In section 435,—

(i) in sub-section (1),—

(a) the words and commas "or District Magistrate, or any Sub-divisional Magistrate empowered by the Provincial Government in this behalf," shall be omitted; and

(b) for the Explanation the following shall be substituted, namely:—

"Explanation.—All Magistrates shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section."; and

(ii) sub-sections (2) and (4) shall be omitted.

2[150A. In section 436, the comma, words and colon or into the case of any person accused of an offence who has been discharged:" and the proviso shall be omitted.].

1 Sub-item (iii) of item 148 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (w.e.f. 24-4-74).

2 Item 150 A ins. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.,

151. For section 436 the following shall be substituted, namely:—

"436. Power to order further inquiry.— On examining any record under section 435 or otherwise-

(a) the High Court may direct the Sessions Judge to require any Judicial Magistrate subordinate to him to make, and the Sessions Judge himself may direct any Judicial Magistrate subordinate to him to make, further inquiry into any complaint which has been dismissed under section 203 or subsection (3) of section 204, or into the case of any person accused of an offence who has been discharged;

(b) the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Executive Magistrates subordinate to him to make further inquiry into any proceeding in which an order of discharge or release has been made under section 119 :

Provided that no Court shall make any direction under this section for enquiry into the case of a person who has been released or discharged under section 119, unless such person has had an opportunity of showing cause why such direction should not be made."

1[152. Section 437 shall be omitted.

152A. In section 438, the words "Sessions Judge or" shall be omitted.

152B. Section 438, amended as aforesaid, shall be omitted.]

153. In section 439,—

(i) in sub-section (1), the words and comma "or which has been reported for orders," shall be omitted ;

(ii) in sub-section (3), the words and figure⁴⁴ acting otherwise than under section 34" shall be omitted; and

(iii) for sub-section (4) the following shall be substituted, namely:—

"(4) Nothing in this section shall be deemed to authorise a High Court:—

(a) to convert a finding of acquittal in to one of conviction; or

(b) to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439A."

154. After section 439, the following new section 439A shall be inserted, namely:—

"439A. Sessions Judge's Powers of revision.—(1) In the case of any proceeding before a Magistrate the record of which has been called for by the Sessions Judge or which otherwise comes to his knowledge, the Sessions Judge may exercise any of the powers conferred on the High Court by section 439.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Sessions Judge."

1Subs. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch., for item 152.

155. In section 465, for sub-section (1) the following shall be substituted, namely:—

"(1) If any person before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such Unsoundness and incapacity, and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case."

156. For section 469 the following shall be substituted, namely:—

"469. When accused appears to have been insane.—When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate or Court is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate or court shall proceed with the case."

157. For sections 476 and 476A, the following shall be substituted, namely:-

"476. Procedure in cases mentioned in section 195.—(1) When any offence referred to in section 195, sub-section (1), clause (b) or clause (c), has been committed in, or in relation to, a proceeding in any Civil, Revenue or Criminal Court the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.

(4) Any person sentenced by an Court under this section may, notwithstanding anything hereinbefore contained, appeal—

(a) in the case of a sentence by the High Court, to the Supreme Court;

(b) in the case of a sentence by a Court of Session, or District Court, or a Court exercising the powers of a Court of Session or a District Court, to the High Court; and

(c) in any other case, to the Sessions Judge.

(5) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section and the Appellate Court may alter the finding or reduce or enhance the sentence appealed against.

476A. Forwarding of cases for trial by Courts having jurisdiction.—(1) If the Court in any case considers that the person accused of any of the offences referred to in section 476, sub-section (1), and committed in, or in relation to, any proceedings before it, should not be tried under that section, such Court may, after recording

the facts constituting the offence and the statement of the accused person, as hereinbefore provided, forward the case to a Court having jurisdiction to try the case, and may require security to be given for the appearance of such accused person before such Court, or if sufficient security is not given, shall forward such person in custody to such Court.

(2) The Court to which a case is forwarded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.”.

158. Sections 476B, 478 and 479 shall be omitted.

159. In section 483, for the words, comma and figure "Indian Registration Act, 1877" the words, comma and figure "Registration Act, 1908" shall be substituted.

160. In section 487,—

(i) in sub-section (1), after the word "sections" the figure and comma, "476" shall be inserted; and

(ii) sub-section (2) shall be omitted.

161. In section 488, in sub-section (1), the words and comma "the District Magistrate, a Sub-Divisional Magistrate or" shall be omitted.

162. In section 494, the words and comma "in cases tried by jury before the return of the verdict, and in other cases" shall be omitted.

1 * * * * *

164. In section 503,—

(i) in sub-section (2B), the words and comma "other than Pakistan," shall be omitted; and

(ii) in sub-section (3), the words and commas " or such Magistrate, of the first class as he appoints in this behalf," shall be omitted; and

(iii) for the word "warrant-cases" the word "cases" shall be substituted.

1Item 163 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (w.e.f. 2-4-74).

165. In section 506,—

(i) for the words "such Magistrate shall apply to the District Magistrate" the words and commas "such Magistrate, if he is a Judicial Magistrate, shall apply to the Sessions Judge, and if he is an Executive Magistrate, shall apply to the District Magistrate" shall be substituted; and

(ii) for the words "and the District Magistrate" the words and commas "and the Sessions Judge or the District Magistrate as the case may be," shall be substituted.

1[165A. In section 508, the words other than Pakistan, shall be omitted.]

166. In section 508A, the words "other than Pakistan" shall be omitted.

167. For section 510 the following section shall be substituted, namely:—

510. Report of Chemical Examiner, Serologist, etc.—Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or any Serologist, finger-print expert or firearm expert appointed by Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code:

Provided that the Court may, 2[if it considers necessary in the interest of Justice] summon and examine the person by whom such report has been made.”

168. In section 512,—

(i) in sub-section (1), for the words "commit for trial" the words "send for trial to the Court of Session or High Court" shall be substituted; and

3 * * * * *

169. In section 514, in sub-section (7), the words and figure "or section 562" shall be omitted.

170. For section 515 The following shall be substituted, namely:—

"515. Appeal from, and revision of, orders under section 514.—All orders passed under section 514 by a District Magistrate or a Judicial Magistrate shall be appealable to the Sessions Judge, and all such orders passed by an Executive Magistrate, other than a District Magistrate, shall be appealable to the District Magistrate, or, if no appeal is made against any such order, may be revised, in the case of an order passed by a District Magistrate or a Judicial Magistrate, by the Sessions Judge, and in the case, of an order passed by an Executive Magistrate other than a District Magistrate, by the District Magistrate."

In section 524, in sub-section (1), for the words "a Magistrate of the first class" the words "any other Executive Magistrate" shall be substituted.

1 Sub-item 165A. ins. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976) s. 2 and Sch.,

2 Subs *ibid.*, for "and shall, if so requested by any parts to such inquiry trial or proceeding".

3 Sub-item (ii) of item 168 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2 and Sch., (w,e,f 24-4-74).

172. In section 526,—

(i) in sub-section (1), in clause 1[(e)] in paragraph (iv) for the word "committed" the word "sent" shall be substituted;

(ii) in sub-section (2), the commas, words and figures "except as provided in section 267," shall be omitted;

(iii) in sub-section (6A), for the words "two hundred and fifty rupee*" the words "five hundred rupees" shall be substituted;

2[(iv) for sub-sections (8) and (9) the following shall be substituted, namely:—

"(8) In an inquiry under Chapter VIII or any trial, the fact that any party intimates to the Court at any stage that he intends to make an application under this section shall not require the Court to adjourn the case; but the Court shall not pronounce its final judgment or order until the application has been finally disposed of by the High Court, and, if the application is accepted by the high court, the proceedings taken by the Court subsequent to the Intimation made to it shall, at the option of the accused, be held afresh".];

(v) in sub-section (10), for the words "two hundred rupees" the words "five hundred rupees" shall be substituted.

3[173. In section 528—

(i) after sub-section (IB), the following new sub-section (1C) shall be inserted, namely:—

'(1C) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may refer it for inquiry or trial to any other such Magistrate competent to inquire into try the same.

4* * * * *

(ii) sub-sections (2) and (3) shall be omitted; and

(iii) in sub-section (5), for the word "section", the words "preceding sub-section" shall be substituted.]

174. Sections 532 and 536 shall be omitted.

175. For section 537 the following shall be substituted, namely:—

"537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.— Subject to the provisions herein before contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account —

(a) of any error, omission or irregularity in the complaint, report by police officer under section 173, summons, warrant, charge, proclamation, order, judgement or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) of any error, omission or irregularity in the mode of trial, including any misjoinder of charges, unless such error, omission or irregularity has in fact occasioned a failure of justice.

1 Subs, by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.. for (e).

2 Subs. *ibid* for w such item (iv).

3 Subs. *ibid.*, for "Item 173".

4 Explanation omitted by the Legal Reforms Act 1997 (23 of 1997) s. 3.

Explanation.—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

176. In section 539, the words "or the Clerk of the State" shall be omitted.

177. In section 539B, in sub-section (2), for the colon a full-stop shall be substituted and the proviso shall be omitted.

178. In section 541, in sub-section (3),—

(i) in clause (a), for the figure and words "342 of the Code of Civil Procedure" the figures, words and commas "58 of the Code of Civil Procedure, 1908," shall be substituted; and

(ii) in clause (b), for the figure and words "341 of the Code of Civil Procedure" the figures, words and commas "58 of the Code of Civil Procedure, 1908," shall be substituted,

179. After section 544,—

(i) the following new section shall be inserted, namely:—

"544A. Compensation to the heirs of the person killed, etc.—(1) Whenever a person is convicted of an offence in the commission where of the death of or hurt or injury to any person is caused, or damage to or loss destruction of any property is caused, the Court shall, when convicting such person unless for reasons to be recorded in writing it otherwise directs, order the person convicted to pay compensation to the heirs of the person whose death has been caused, or to the person hurt or injured, or to the owner of the property damaged, lost or destroyed, as the case may be, of an amount not exceeding the amount of the fine which the Court is empowered to impose for such offence.

(2) The compensation payable under sub-section (1) shall be recoverable as if it were a fine imposed by the Court, and the Court may further order that, in default of payment, the person ordered to pay such compensation shall suffer imprisonment for a period not exceeding six months, or if it be a Court of the Magistrate of the third class, for a period not exceeding thirty days.

(3) The compensation payable under sub-section (1) shall be in addition to any sentence which the Court may impose for the offence of which the person directed to pay compensation has been convicted.

(4) The provisions of sub-sections (2B), (2C), (3) and (4) of section 250 shall, as far as may be, apply to payment of compensation under this section.

(5) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision."; and

(ii) section 544A inserted by the Code of Criminal Procedure (West Pakistan Amendment) Act, 1963 (W. P. Act No. XI of 1963) shall be omitted.

180. In section 546, after the word "lection", the figure and words " 544A or section" shall be inserted.

181. In section 548, the words "the Judge's charge to the jury or of shall he omitted.

182. In section 556, the words "or commit for trial" shall be omitted.

183. In section 559, in sub-section (2), for the words and comma "the District Magistrate", the words and comma "the Sessions Judge in the case of a Judicial Magistrate, and the District Magistrate in the case of an Executive Magistrate" shall be substituted.

184. In section 561,—

(i) for sub-section (1) the following shall be substituted, namely:—

"(1) Notwithstanding anything in this Code, no Magistrate shall except under the order of a Sessions Judge, take cognizance of the offence of rape where the sexual intercourse was by a man with his wife,"; and

(ii) in sub-section (2), for the words "District Magistrate" the words "Sessions Judge" shall be substituted.

1[185. In section 565, in sub-section (1),—

2* * * * *

(ii) The Words Transportation or shall be omitted]

3* * * * *

187. In section 13, in the margin, for the word "Magistrate" the words "Executive Magistrate" shall be substituted.

3* * * * *

189. In section 72, for the marginal note the following shall be substituted, namely:—

"Service on servant of State, Statutory Body of Company."

190. In section 74, in the margin, for the word "officer" the word "person" shall be substituted.

191. In section 88, in sub-section (6), in the margin, for the figures and word "XIV of 1882" the words and figures "Act V of 1908 " shall be substituted.

192. In section 98, in sub-section (2), in the margin, for the figures and word "VIII of 1878" the figures and word "XV of 1969" shall be substituted.

193. In section 99A, in sub-section (1), in the margin, for the figures and word "XXV of 1867" the figures, words and semi-colon "XV of 1960" West Pakistan Ordinance XXX of 1963" shall be substituted,

194. In section 99D, in the margin, for the words "Special Bench" the words "High Court" shall be substituted.

1 Subs. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch., for item 185.

2 Sub. item (i) omitted by the Legal Reforms Act, 1997 (23 of 1976) s. 3.

3 Entries 186 and 188 omitted *ibid.*,

195. In section 108, in the margin, for the figures and word "XLV of 1860" the figures, words and semi-colon "XXV of 1867; West Pakistan Ordinance XXX of 1963" shall be substituted.

196. In section 128, in the margin, the figures and word "XX of 1869" shall be omitted.

197. In section 130, in the margin, the figures and word "XX of 1869" shall be omitted.

1[197A. In section 146, in the margin, for the figures and word 'XIV of 1882' the figures and word 'V of 1908' shall be substituted.]

198. In section 178, the marginal note to the proviso shall be omitted.

199. In section 195, in sub-section (2), in the margin, for the figures and word "III of 1877" the figures and word "XVI of 1908" shall be substituted.

200. In section 241, for the marginal note the following shall be substituted, namely:—

"Procedure in trial of cases".

201. In section 262, in the margin, for the words "for summons and warrant-cases" the words and figure "Prescribed in Chapter XX" shall be substituted.

1[201A. In section 350 in the margin the words 'or commitment' shall be omitted.]

202. In section 355, for the marginal note the following shall be substituted, namely:—

"Record in trial of certain cases by first and second class Magistrates".

203. In section 371, in the margin, the words "on application" shall be omitted.

2* * * * *

205. In section 408, in the margin, for the words "Magistrate of the first class" the words "Judicial Magistrates" shall be substituted.

206. In section 465, in the marginal note, for the words "committed before" the words "sent for trial" shall

be substituted.

207. In section 483, in the margin, for the figures and word "III of 1877" the figures and word "XV of 1908" shall be substituted.

208. In section 506, in the margin, the words "Provincial Subordinate" shall be omitted.

209. In section 541, in sub-section (3), in the margin, for the figures and word "XVI of 1882" the figures and word "V of 1908" shall be substituted.

1 Items 197A and 201A ins. by the Law Reforms (Amdt.) Act, 1976 (21 of 1976) s. 2 and Sch.

2 Item 204 omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974). s. 2 and Sch., (w.e.f. 24-4-74).

210. In Schedule II,—

(i) in the entries relating to section 174, after the existing entries, the following new entries shall be inserted, namely:—

"2 3 4 5 6 7 8

If it be a Proclamation Ditto Ditto Ditto Ditto Imprisonment for Ditto."; issued under section 87 three years, of the Code.

(ii) the entries relating to section 226 shall be omitted;

1 * * * * *

(iv) in column 3, for the entry relating to section 497 the words "may arrest without warrant" shall be substituted.

2 * * * * *

(vi) in column 7,—

3 * * * * *

(d) in the entry relating to section 498 for the figure "2" the figure "3" shall be substituted

(vii) in column 8,—

(a) for the words "Any Magistrate," the words "Any Judicial Magistrate" shall be substituted;

(b) for the entry relating to section 124A the following shall be substituted, namely:—

"Court of Session or Magistrate of the first class specially empowered by the Provincial Government in that behalf on the recommendation of the High Court.";

(c) for the entries relating to sections 218 and 295A the following shall be substituted; namely :— .

"Magistrate of the first class " ;.

(d) in the entries relating to section ,312,—

(1) for the words "Court of Session" the words "Magistrate of the first class" shall be substituted; and

(2) for the word "Ditto", the words "Court of Sessions" shall be substituted;

(e) in the entry relating to section 376, for the words "Court of Session or District Magistrate" the words "Magistrate of the first class" shall be substituted;

(f) in the entries relating to sections 129, 133, 148, 152, 161, 162, 164, 167, 181, 201, 205, 213, 214, 221, 222, 225, 225A, 233, 235, 237, 242, 246, 263, 304A, 318, 324, 332, 344, 347, 348,384, 404. 406. 411. 414. 418. 454. 456. 462. 465. 484. 485. 487 and 500 the words and comma "Court of Session, or" shall be omitted:

1 Sub-item (iii) omitted by the Criminal Procedure (Amdt.) Act, 1974 (25 of 1974), s. 2, and Sch., (w.e.f. 24-4-74).

2 Sub-item (a) omitted by the Law Reforms (Amdt.) Act, 1976 (21 of 1976), s. 2 and Sch.

3 Clauses (a), (b) and (c) of sub-item (vi) omitted by Act 25 of 1974, s. 2 and Sch., (w.e.f. 24-4-74).

(g) in the entries relating to sections 193, 212, 216, 218, 248, 252, 261,469 and 507, for the word " Ditto " the words" Magistrate of the first class" shall be substituted;

(h) for the entries relating to sections 243, 249, 253, 325 and 457, the following shall be substituted, namely:—

"Court of Session, or Magistrate of the first class.";

(i) in the entries relating to section 308,—

(a) for the word "Ditto" first occurring, the words "Magistrate of the first class" shall be substituted; and

(b) for the word "Ditto" occurring for the second time, the words and comma "Court of Session, or Magistrate of the first class" shall be substituted;

(j) in the entries relating to sections 404 and 454, for the word "Ditto" the words and comma "Court of Session, or Magistrate of the first or second class" shall be substituted; and

(k) under the heading "Offences against other laws" in the third entry, the words and comma "Court of Session, or" shall be omitted.

211. In Schedule III,—

(i) in Part I, under the heading "Ordinary Powers of a Magistrate of the Third Class",—

(a) Items (10), (11) and (12) shall be omitted; and

(b) in item (17), for the words "District Magistrate" the words "Sessions Judge" shall be substituted;

(ii) in Part II, under the heading "Ordinary Powers of Magistrate of the Second Class", in item (2), for the words "commit for trial" the words "send for trial to the Court of Session or the High Court" shall be substituted;

1* * * * *

212. For Schedule IV the following shall be substituted, namely:—

1 Sub-items (in), (iv) and (v) of item 211 omitted by the Legal Reforms Act, 1997 (23 of 1976) s. 3.

"SCHEDULE IV

(See section 37)

Additional Powers with which Magistrates may be invested.

PART I

Powers with which a Magistrate of first class may be invested by the Provincial Government.

(1) Power to try cases under section 124A of the Pakistan Penal Code.

(2) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.

(3) Power to take cognizance of offences upon complaint, section 190.

(4) Power to take cognizance of offences upon police report, section 190.

(5) Power to take cognizance of offences without complaint, section 190.

(6) Power to transfer cases, section 192.

(7) Power to try summarily, section 260.

(8) Power to pass sentence on proceedings recorded by a Magistrate of the second or third class, section 349.

Powers with which a Magistrate of the second class may be invested by the

Provincial Government.

- (1) Power to record statements and confessions during a police investigation, section 164.
- (2) Power to authorise detention of a person in the custody of the police during a police investigation, section 167.
- (3) Power to take cognizance of offences upon complaint, section 190.
- (4) Power to take cognizance of offences upon police report, section 190.
- (5) Power to take cognizance of offences without complaint, section 190.

Powers with which a Magistrate of the third class may be invested by the Provincial Government.

- (1) Power to take cognizance of offences upon complaint, section 190.
- (2) Power to take cognizance of offences upon police report, section 190.

PART II

Powers with which any of the Executive Magistrates may be invested by the Provincial Government.

- (1) Power to make order prohibiting repetition of nuisances, section 143.
- (2) Power to make orders under section 144.
- (3) Power to make orders, etc., in possession cases, sections 145 and 147.
- (4) Power to hold inquests, section 174.
- (5) Power to sell property alleged or suspected to have been stolen, etc., section 524.

Powers with which any Executive Magistrate may be invested by the District Magistrate.

- (1) Power to make orders prohibiting repetition of nuisances, section 143.
- (2) Power to make orders under section 144.
- (3) Power to hold inquests, section 174.

213. In Schedule V, Forms XXVII, XXXII, XXXIII and XLII shall be omitted.
